

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff, No: 1:20cr183-1/2/5/6

vs.

ADAM DEAN FOX,  
BARRY GORDON CROFT, JR.,  
DANIEL JOSEPH HARRIS and  
BRANDON MICHAEL-RAY CASERTA,

Defendants.

Before:

THE HONORABLE ROBERT J. JONKER  
U.S. DISTRICT Judge  
Grand Rapids, Michigan  
Monday, April 4, 2022  
Excerpt of Jury Trial Proceedings  
Jury Question

APPEARANCES:

MR. ANDREW BIRGE, U.S. ATTORNEY  
By: MR. NILS R. KESSLER  
MR. JONATHAN C. ROTH  
The Law Building  
333 Ionia Avenue, NW  
Grand Rapids, MI 49501-0208  
(616) 456-2404

On behalf of the Plaintiff;

MR. CHRISTOPHER M. GIBBONS  
MS. KAREN M. BOER  
Dunn Gibbons PLC  
125 Ottawa Avenue, NW, Suite 230  
Grand Rapids, MI 49503-2865  
(616) 336-0003

On behalf of Defendant Fox.

1 JOSHUA ADAM BLANCHARD  
2 Blanchard Law  
3 309 South Lafayette Street, Suite 208  
4 P.O. 938  
5 Greenville, MI 48838-1991

6 On behalf of Defendant Croft, Jr.

7 JULIA ANNE KELLY  
8 Willey & Chamberlain LLP  
9 300 Ottawa Avenue NW Suite 810  
10 Grand Rapids, MI 49503-2314  
11 (616) 458-2212

12 On behalf of Defendant Harris.

13 MICHAEL DARRAGH HILLS  
14 Hills at Law PC  
15 425 South Westnedge Avenue  
16 Kalamazoo, MI 49007-5051  
17 (269) 373-5430

18 On behalf of Defendant Caserta.

19 REPORTED BY: MR. PAUL G. BRANDELL, CSR-4552, RPR, CRR  
20  
21  
22  
23  
24  
25

\*\*\*\*\*

1 THE COURT: Court is in session. All right. Welcome  
2 back everyone. We are here in the case of the United States  
3 against Adam Fox and others. The jury has sent a question a  
4 little while ago that I think I need to talk to the lawyers  
5 about. I'll ask that James circulate it. It is signed by the  
6 foreperson. It's a simple question. It says, can we get a  
7 legal description of a, quote, weapon, end quote? And this  
8 builds on the earlier request a little while I guess ago I  
9 expect for a dictionary, which I simply referred them to our  
10 general instruction that they not use outside sources,  
11 including dictionaries. So I will give you a chance to see  
12 that.  
13

14 I don't know if you have any immediate reactions or  
15 thoughts. The issue comes up probably twice in the  
16 instructions in the definition of a weapon of mass destruction  
17 and in the definition of a destructive device. And there  
18 isn't, to my knowledge anyway, a generic federal definition of  
19 the term. There is certainly a Black's Law Dictionary general  
20 idea that it's any instrument that could be designed or used to  
21 injure or kill or destroy. Certainly if we are looking at  
22 state law, deadly weapon can typically be anything as long as  
23 it's a potential for use in a way to seriously physically  
24 injure or kill is at issue. That's from a model criminal  
25 instruction. But I don't think I've ever had it come up in

1       this context, and I am interested in what the lawyers think we  
2       should say to the jury either by having them come in here and  
3       have me speak to them or by having me write them something  
4       back. So I'll start with the government, if you have any  
5       thoughts, and get anything from the Defense.

6               MR. KESSLER: The definition that you just gave a  
7       moment ago, I believe you are saying that came from Black's Law  
8       Dictionary, that sounded reasonable to me.

9               THE COURT: All right. The Black's Law Dictionary  
10      says that an instrument used or designed to be used to injure  
11      or kill someone. The part I added was to injure, kill or  
12      destroy, because I think that's part of what you see in some of  
13      the cases, but any other thoughts one way or the other?

14              MR. KESSLER: No problem with the destroy. That would  
15      also cover I think what is a topic in this case as well, so...

16              THE COURT: All right. Mr. Gibbons?

17              MR. GIBBONS: My initial reaction is that the jury is  
18      seeking for a definition outside the scope of the jury  
19      instruction because the instruction itself defines what a  
20      weapon of mass destruction is. So I have that concern, Your  
21      Honor. So I am not a proponent at this point of giving them  
22      further direction. I think it has its common term, and I think  
23      they should apply other common knowledge and apply that in the  
24      context of the definition provided in the instruction.

25              THE COURT: All right. Ms. Kelly, any thoughts?

1 MS. KELLY: Thank you, Your Honor. I would agree with  
2 Mr. Gibbons. I have concerns and would object to the danger,  
3 kill or destroy language as proposed by the Court.

4 THE COURT: All right. Mr. Hills?

5 MR. HILLS: My client is not on that, but I would -- I  
6 believe that the definition is defined as in the jury  
7 instructions well enough and I would direct them back to that.

8 THE COURT: All right. Mr. Blanchard?

9 MR. BLANCHARD: Thank you. I would object to  
10 instructing them beyond what we have. I think we should refer  
11 them back to the jury instructions. Weapon of mass destruction  
12 is defined and I don't think weapon is at play in 3.01(a) and I  
13 think it's sufficiently defined in 2.02, possession of an  
14 unregistered destructive device, because really the question  
15 there is destructive device. So I would object to instructing  
16 them further than the instructions.

17 THE COURT: The difficulty with simply referring them  
18 back to the instructions is that with respect to weapon of mass  
19 destruction, one of our definitional statements is it, quote,  
20 does not include any device that was not designed or redesigned  
21 for use as a weapon, end quote. Naturally that's not really  
22 covered by what we do affirmatively define. And similarly, in  
23 the destructive device instruction we say a destructive device  
24 does not include any device that was not designed or redesigned  
25 for use as a weapon. So I think if we just send them back to

1 the instructions which do define some of those terms we are not  
2 really meaningfully addressing their question.

3 Of course, we don't know what it is, which is why I  
4 want to stay pretty generic, but I think the Black's Law  
5 Dictionary is pretty generic without really pushing one way or  
6 the other. Both sides argued either explicitly or implicitly  
7 it seems to me that from the Defense point of view it's just  
8 fireworks. The government said, well, it's not just fireworks  
9 if you strap pennies around the outside of it. Came up a  
10 little less oblique or a little less directly rather on the  
11 thing that Red was selling because we don't know specifically  
12 what he was selling. We just had the video he used. But I  
13 don't know which one if either of those scenarios are what's  
14 hanging them up. I think if I tell them go back to the  
15 instruction, though, I'm ignoring what is a pretty obvious  
16 question based on what I've already given them, so I don't know  
17 if that changes anything from your perspective, Mr. Gibbons?

18 MR. GIBBONS: No, Your Honor.

19 THE COURT: Ms. Kelly?

20 MS. KELLY: No, Your Honor.

21 THE COURT: Mr. Hills?

22 MR. HILLS: No, Your Honor.

23 THE COURT: Mr. Blanchard?

24 MR. BLANCHARD: I'm trying to look at the Black's if I  
25 can here. Could I impose on the Court to read me the proposed

1 Black's one more time?

2 THE COURT: I've looked at, from Black's 11th Edition,  
3 2019, is simply the term weapon. An instrument used or  
4 designed to be used to injure or kill someone. But I would, if  
5 I did that, add, use to injure, kill or to destroy. Injure or  
6 kill someone or some thing.

7 MR. BLANCHARD: So I guess if the Court is inclined to  
8 go that way, one of my thoughts is that while a weapon of mass  
9 destruction and the crime of use of a weapon of mass  
10 destruction encompasses damage to personal property, I don't  
11 know that that's what's intended by the destruction of -- or  
12 the definition of destructive device when it says, used or  
13 designed or redesigned as a weapon. I think that might be  
14 cabined just to use against a person. Something that could,  
15 you know, damage property. I don't know that that by itself  
16 makes it a destructive device, and adding onto the end of the  
17 Black's definition I think could muddy the waters a bit. So  
18 again, I object to any further instruction, but if the Court is  
19 going to, I'd ask the Court to confine it to that Black's  
20 definition that is to be used to injure or kill someone.

21 THE COURT: All right. Anything, Mr. Kessler?

22 MR. KESSLER: No. I have to disagree with that, Your  
23 Honor. Clearly this is meant to be -- to encompass being used  
24 against property as well, the statute is, and I don't think  
25 there is anything prejudicial about that definition. It seems

1       like the proposition on the other side is just to hope that the  
2       jury remains confused and that that's somehow inure to their  
3       benefit. I don't think there is any way you can think of that  
4       definition that you are proposing as being prejudicial in  
5       itself.

6               THE COURT: All right. What I think I'll do is ask  
7       the jury to come back in. I could write that out but I think  
8       it's a sensitive enough question judging from the way the  
9       parties have reacted that it would be nice to have them in here  
10      so that I can actually say that. I don't plan to say a lot,  
11      but I do plan to say something along the lines of what I  
12      described and adapted from Black's as an instrument used to --  
13      used or designed to be used either to destroy, injure or kill  
14      someone or some thing. I do think it's fair to go beyond  
15      simply injury or death to another human being because  
16      destructive devices, as we've all seen most recently in the  
17      Ukraine, destroy property. There is often people inside the  
18      property, and so sometimes they go hand and glove together.  
19      But I think there is nothing that I know of in the federal  
20      statute that would limit liability for possessing an  
21      unregistered destructive device or using a weapon of mass  
22      destruction only if the intended target was a human being. It  
23      certainly, I think, has brought enough to encompass property  
24      that the exclusion is for things that aren't intended for use  
25      to destroy, injure or kill or maim and are simply things to



1 blow up for fun as we've heard from testimony in the case. So  
2 I think that that's a fair distinction and one I'll try to  
3 convey to the jury.

4 Anything else on this?

5 MR. KESSLER: No, Your Honor. Thank you.

6 MR. GIBBONS: No, Your Honor.

7 MR. HILLS: No, Your Honor.

8 THE COURT: All right. So let's bring in the jury,  
9 and once they -- it'll take them a minute to get situated and  
10 then we'll bring in the alternates at the same time so they can  
11 hear it.

12 LAW CLERK: All rise.

13 (Jury in, 3:08 p.m.)

14 THE COURT: All right. Please be seated everyone.  
15 Welcome back. Good to see you. I know it's been a long day  
16 for everybody who is waiting and for all of you who are hard at  
17 work. And we have a question. Can we get a legal description  
18 of a, quote, weapon, end quote? And this is one of those  
19 awkward ways in which we try to respond to the question in a  
20 meaningful way but don't exactly know if we are going to do it  
21 or not, and you don't have the immediate ability for followup  
22 so I'll do the best I can. If it addresses what you are after,  
23 great. If it doesn't you can follow up with another question  
24 and let me know.

25 I am thinking, because I can tell you've been very

1       attentive to the jury instructions, that you are probably  
2       focused on the language I used in defining the conspiracy to  
3       commit the crime of use of a weapon of mass destruction and  
4       then some similar language in the language on an unregistered  
5       destructive device, because in both of those situations, of  
6       course, we are using the term weapon, but I say, for example,  
7       that a destructive device does not include any device that was  
8       not designed or redesigned for use as a weapon, which naturally  
9       begs the question, what's a weapon? And similarly, a weapon of  
10      mass destruction does not include any device that was not  
11      designed or redesigned for use as a weapon.

12               The law has all kinds of definitions for so many  
13      things, and you have kept some of them or quoted some of them  
14      in here. There is no overarching definition that I know of in  
15      State or Federal law for a weapon. It's more contextual. But  
16      I do think the most general thing I can say is that the weapon,  
17      when it's just used as a word by itself, is meant to be a  
18      category of devices that could readily be used or designed to  
19      either destroy or injure or kill someone or something. That's  
20      the general idea of weapon as opposed to something you'd simply  
21      use for fun. You are going to use it to destroy, or capable of  
22      destroying, injuring or killing someone or some thing. That's  
23      the category of things we're trying to capture. And it could  
24      apply very broadly to anything from somebody's fist to a chair  
25      to anything, but in this context, of course, we are using it in

1 the context of the other things I've defined that have to do  
2 with, you know, in the case of weapon of mass destruction,  
3 explosives, incendiaries, poison gas and the whole list of  
4 things that I included there for you, and destructive device  
5 including a very similar list. But the broad category weapon  
6 we are trying to capture something that's a device or something  
7 that can be used to injure, kill or destroy someone or some  
8 thing.

9 So if that helps I hope, great. If it doesn't, you  
10 just let us know and you know where to find us and we know  
11 where to find you. All right. Take care. Good luck.

12 LAW CLERK: All rise, please.

13 (Jury out, 3:11 p.m.)

14 THE COURT: All right. Are there objections for the  
15 record?

16 MR. KESSLER: No, Your Honor.

17 MR. GIBBONS: Nothing further, Your Honor.

18 MS. KELLY: No, Your Honor.

19 MR. HILLS: No, Your Honor.

20 MR. BLANCHARD: Nothing additional.

21 THE COURT: Okay. Very good. Well, I'll keep you  
22 posted. I do have sentencings that were supposed to start at  
23 3:00 and then another at 4:00. So I am going to move to the  
24 3:00 o'clock now. You are all, of course, welcome to stay, but  
25 probably not your highest and most interesting use of time.

1 But we will convene whenever we hear again from the jury as  
2 needed, so you may want to stay close or closer than you have  
3 been. Thank you.

4 LAW CLERK: Court is in recess.

5 \*\*\*\*\*

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## REPORTER'S CERTIFICATE

I, Paul G. Brandell, CSR-4552, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of an excerpt from the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/ Paul G. Brandell

Paul G. Brandell, CSR-4552, RPR, CRR

U.S. District Court Reporter

399 Federal Building

Grand Rapids, Michigan 49503